

## Update from the Public Rights of Way & Access Service

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A report by the Public Rights of Way and Access Service Manager to Kent County Council's Regulation Committee on Thursday 23 September 2021.

### **Recommendation:**

**I recommend that Members consider this report and note its content.**

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### **Progress with Definitive Map & Statement applications**

1 Members requested that a summary of the current position in respect of applications to amend the Definitive Map and Statement (DMS) be provided annually to the Regulation Committee.

### **Section 53 Applications**

2 Any person may make an application to the County Council, as the Surveying Authority, under section 53 of the Wildlife & Countryside Act 1981, to amend the DMS to add, upgrade, downgrade, or delete a Public Right of Way. The County Council has a duty to investigate every application it receives. Investigation involves undertaking interviews with witnesses and landowners, documentary research and consultation, amongst other things. It is our policy to deal with these applications in order of receipt except where:

- the physical existence of the claimed route is threatened by development or,
- the resolution of an application would enable the County Council to properly assess or manage public safety or
- the claimed route may result in a significant improvement to the network.

In such instances a case may be accelerated.

2.1 During the period April 2020 to March 2021, 13 applications were determined, 12 orders were made, 7 were confirmed and 5 are awaiting a decision. 12 cases are currently under investigation. To date there are 60 unallocated applications. The number of applications received fluctuates with 7 applications being received in 2018, 22 applications in 2019, 37 in 2020 and so far, this year 6 have been received. This large increase in applications in 2020 will have an impact on the backlog. The next application to be allocated was received in August 2017 indicating a backlog of 4 years. However, when considering that on average, 10-12 applications have been determined each year, the reality is that the current backlog has increased to 5 - 6 years.

2.2 There are 5 cases with the Planning Inspectorate awaiting determination as objections were received to the making of an order.

2.3 The Schedule of Applications is updated on a regular basis and can be located on the County Council's website at:

<http://www.kent.gov.uk/waste-planning-and-land/public-rights-of-way/correct-the-rights-of-way-map>

## **Applications to divert, extinguish or create public rights of way**

3. As part of its rights of way functions, the County Council also deals with applications from landowners to divert or extinguish public rights of way using powers available to it under the Highways Act 1980. Public rights of way can be diverted for a range of reasons provided that it is 'expedient' (or necessary) to do so and that the proposed diversion is not substantially less convenient, or less enjoyable, for users. The test for extinguishing (stopping up) a right of way is considerably narrower, and it is generally only possible to do this in cases where the right of way is 'unnecessary' or 'not needed for public use'.

3.1. During the period April 2020 to March 2021, 10 Public Path Orders have been confirmed. 27 applications are currently being processed. There are 66 unallocated diversions/extinguishments resulting in a backlog of approximately 3 years between the receipt of an application and allocation to an officer.

3.2. There are 3 cases with the Planning Inspectorate awaiting determination.

3.3. The County Council also deals with applications made under the Town & Country Planning Act 1990 to close or divert public rights of way that are affected by development. This work is undertaken on behalf of Ashford, Canterbury, Dartford, Dover, Gravesham, Folkestone and Hythe, Sevenoaks, Swale, Tonbridge & Malling & Tunbridge Wells Councils and the Ebbsfleet Development Corporation. A small number of applications are also processed in respect of our own planning functions. During the period April 2020 to March 2021, 11 Public Path Orders have been confirmed/certified. There are 27 cases where orders have been made and confirmed and are awaiting certification following the completion of the works on site.

3.4. The Schedule of Applications, which is updated on a regular basis, can be located on the County Council's website at:  
<http://www.kent.gov.uk/waste-planning-and-land/public-rights-of-way/change-rights-of-way>

## **Statutory Deposits under section 31(6) of the Highways Act 1980 and/or section 15A(1) of the Commons Act 2006**

4. This is a means by which landowners can protect their land against any, or further, public rights of way or a village green from being registered as a result of future unchallenged public use.

4.1. During the period April 2020 to March 2021, 33 Deposits have been received, an increase of 10 from the previous year.

## **Land Searches and Temporary Traffic Regulation Orders**

5. The Definitive Map Team also provide local authority search responses in respect of public rights of way and common land and village greens. The Team also processes the Temporary Traffic Regulation Orders required by the Public Rights of Way and Access Service when undertaking maintenance work, or to ensure public safety. Orders are also made to facilitate work by statutory undertakers, landowners and developers. The full cost of providing these services is recovered from the applicant. Given that much of this activity is tied to the state of the housing market

and the level of development it does fluctuate and currently does impact on the capacity of the team to progress Public Path Orders.

## **Backlogs**

6. The backlogs for applications to both divert/extinguish public rights of way and to amend the DMS reflect the complex and lengthy procedures to be followed. There is a strong correlation between the number of applications determined and the number of experienced officers available to undertake the work. Additionally, there is no ability to limit the number of applications to amend the DMS that are received in any year. The number of applications received, in any one year, can exceed the resource available to determine them.

6.1 Within Schedule 14 of the Wildlife and Countryside Act 1981 there is provision for an applicant to apply to the Secretary of State if their application has not been dealt with within 12 months of receipt. The County Council received 1 Notice that an applicant had applied to the Secretary of State in the last 12 months. The Secretary of State has yet to issue a decision on this request. It is predicted that more applicants will consider this course of action as the backlog continues to increase.

6.2 The capacity of the team was increased at the end of 2019 to 5.3 fte. The benefits of that increase are starting to feed through in terms of the number of cases being progressed. Given the impending legislative changes, highlighted below, and the 2026 cut-off date, it is expected that the numbers of applications for Definitive Map Modification Orders will continue to increase at a higher rate than was previously experienced. This reflects with the situation in other Surveying Authorities

## **Legislative Update**

7. Deregulation Act 2015 – The Deregulation Act came into force on 27<sup>th</sup> March 2015, however the elements in relation to PROW have still not come into force as we are awaiting the associated regulations and guidance. No firm indication as to when the regulations will be published has been given by DEFRA.

7.1 Stakeholders are preparing for the regulations and specifically the bringing into force of the 2026 cut-off-date. This is where all unrecorded rights of way created before 1949 will be extinguished immediately after 1 January 2026 – subject to certain exceptions:-

- It provides for Local Authority's to designate a right of way for protection during a short window after the cut-off – a one year period.
- It is anticipated that routes identified on the list of streets/local street gazetteer as publicly maintainable or as private streets carrying public rights will be preserved.
- It preserves rights over routes that are subject to a pending application.

7.2 It is interesting to note that of the 60 unallocated section 53 applications, 39 are based upon pre-1949 historical evidence with the remaining ones being based predominately on user evidence. This reflects a significant change in the basis on which applications had previously been made.

## **Continuing Impact of COVID-19**

8. The corona virus outbreak has had an impact on the work of the Definitive Map Team. During the first period of lockdown, no orders were made or advertised. New cases could not be started that required a site visit due to the restrictions which were in place at the time. It is still not possible to strictly comply with the legal requirements, for the advertising and publication of orders due to County Council and many District Council offices remaining closed to the public. In all cases orders should be on display, available for inspection and copies available to the public at a reasonable cost at a Council office in the area to which the order relates.

8.1 As we could not feasibly delay order making for any longer, a decision was taken to progress orders. In order to mitigate any risk of the public not being able to view a copy of an order at a Council Office copies of the notice and order have been made available on the County Council's website and an extra line has been added to public notices informing the public that they may also obtain a copy by contacting the case officer. This is in addition to placing a copy of the notice on site and in the Kent Messenger. It is therefore felt that we have taken a more than reasonable approach and no-one will be disenfranchised by the offices not being open to the public. It is interesting to note that an order has recently been confirmed by the Planning Inspectorate where this process was adopted.

8.2 One of the more positive outcomes from the COVID outbreak was the holding of a number of virtual public inquiries by the Planning Inspectorate. Two of these inquiries related to rail crossing extinguishment and diversion orders at Whitstable and Otford respectively. In some respects the inquiries were less onerous and easier to arrange than those held in person. One of the greatest benefits was that inquiries could be followed on the Planning Inspectorates you tube channel.

### **Member Training**

9. I am aware that a number of Members are new to the County Council and the Regulation Committee. We are liaising with the Chair and Committee Secretary to find a convenient date or dates on which to provide training on the Definitive Map and Statement, Definitive Map Modification Orders, Public Path Orders and Common Land and Village Greens. I would like to take the opportunity to encourage all to attend.

### **Recommendation**

9. I RECOMMEND Members consider this report and note its content.

#### **Contact Officer:**

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